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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/798,665

03/11/2004

E. Marlowe Goble

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EXAMINER

COMSTOCK, DAVID C

ART UNIT

PAPER NUMBER

3733

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/798,665	<b>Applicant(s)</b> GOBLE ET AL.	
	<b>Examiner</b> DAVID COMSTOCK	<b>Art Unit</b> 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 35-42, 44, 45, 47-58, 60-64, 92-94 and 96-112 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 109 and 112 is/are allowed.
- 6) ☒ Claim(s) 35-42, 44, 45, 47-51, 54-58, 60-64, 92-94, 96-99, 101-108, 110 and 111 is/are rejected.
- 7) ☒ Claim(s) 52, 53 and 100 is/are objected to.
- 8) ☒ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/9/09, 12/9/08</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 35-42, 44, 45, 47, 48 and 94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masini (5,571,203) in view of Bloebaum (4,964,868; cited by Applicant in IDS of 09 April 2009).

Masini discloses the claimed invention including a body having a bearing plate with a top articular surface, e.g. 436, 446 and an opposing side with a bone apposition surface. A threaded stem having a threaded blind socket extends at an angle of between about 30 to about 80 degrees from the bone apposition surface. A fastener 456 engages the threaded stem. The implant is a femoral implant. The body comprises parts that can be selectively connected together. See, e.g., Fig. 4. Masini does not explicitly recite providing an inlay of porous material in a pocket on an implant.

Bloebaum also discloses an implant 10 secured to bone and teaches that implants can comprise a pocket configuration and an inlay of porous material 18 in order to achieve improved ingrowth fixation and improve the reliability of the device (see, e.g., Figs. 1 and 6 and col. 2, lines 20-24). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the implant of Masini with a

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pocket configuration and an inlay of porous material, in view of Bloebaum, in order to achieve improved ingrowth fixation and improve the reliability of the device. It would have been further obvious to have provided the stem with a length in a range between about 2 mm and about 6 mm, for example, to accommodate varying patient anatomy, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Claims 49-51, 55-58, 60-64, 92, 93, 96-99, 101-108, 110 and 111 are rejected under 35 U.S.C. 102(b) as being anticipated by Albrektsson (WO 89/11837; or record) in view of Moore (5,507,812; cited by Applicant in IDS of 09 April 2009).

Albrektsson disclose an implant 1, a threaded stem projecting from a bone apposition surface of the implant, an elongate fastener 8 and a tubular bone anchor 6 (see Figure on cover and Abstract). Albrektsson does not explicitly recite threads on the exterior surface of the bone anchor. Moore also discloses an implant 20 secured to bone and teaches that threads 28 can be provided on the exterior of a bone anchor to secure the anchor in the bore (see, e.g., Fig. 2 and col. 3 28-30). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bone anchor of the implant of Albrektsson with threads on an exterior surface thereof, in view of Moore, in order to secure the anchor in the bore and more securely attach the implant to bone. It also would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the stem with a length in a range between about 5 mm and about 15 mm, for example, to

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accommodate varying patient anatomy, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. It also would have been obvious to have provided an enlarged nut on the fastener, in view of Moore (see, e.g., Fig. 2, ref. numeral 28, and col. 3, line 65 - col. 4, line 2), in order to facilitate implantation and fixation of the device.

Claim 54 is rejected under 35 U.S.C. 102(b) as being anticipated by Albrektsson (WO 89/11837; or record) in view of Moore (5,507,812; cited by Applicant in IDS of 09 April 2009), as applied to claim 49 above, and further in view of Bloebaum (4,964,868; cited by Applicant in IDS of 09 April 2009).

The device of Albrektsson as modified by Moore discloses the claimed invention except for explicitly reciting an inlay of inlay of porous material in the pocket on the implant. Bloebaum discloses an implant 10 secured to bone and teaches that implants can comprise an inlay of porous material 18 in a pocket of the implant in order to achieve improved ingrowth fixation and improve the reliability of the device (see, e.g., Figs. 1 and 6 and col. 2, lines 20-24). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the implant of Albrektsson and Moore with an inlay of porous material in the pocket, in view of Bloebaum, in order to achieve improved ingrowth fixation and improve the reliability of the device.

***Allowable Subject Matter***

Claims 109 and 112 are allowable over the prior art of record.

Claims 52, 53 and 100 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed 09 December 2008, with regard to the claims, as amended, have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on 09 April 2009 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Comstock whose telephone number is (571) 272-4710 (a detailed message should be left if Examiner is unavailable). If attempts to reach the Examiner by telephone or voicemail are unsuccessful, the examiner's supervisor, Eduardo Robert, can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/David Comstock/

Examiner, Art Unit 3733

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733